

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
IGOR AKHTYRSKIY

Plaintiff,

JANTON CONTRACTORS LLC, DESIGNCORE
MILLWORK AND FIXTURES LTD.,
DESIGNCORE LTD., JANTON INDUSTRIES
INC, and FRANK IANNO

Defendants,
-----X

COMPLAINT

Plaintiff IGOR AKHTYRSKIY, by and through his attorneys, on behalf of himself, alleges, upon personal knowledge as to himself and his own acts, and upon information and belief as to all other matters, as follows:

PRELIMINARY STATEMENT

1. Plaintiff brings this action to remedy violations of the Fair Labor Standards Act, as amended, 29 U.S.C. § 201 et seq. (“FLSA”). Plaintiff seeks unpaid overtime pay, liquidated damages, reasonable attorneys’ fees and costs, and all other appropriate legal and equitable relief, pursuant to 29 U.S.C. §§ 216(b) and 217, and other applicable federal law.

2. Plaintiff also bring this action to remedy violations of the New York State Labor Law, including N.Y. Lab. L. §§ 190 et seq., §§ 650 et seq. (“NYLL”), and 12 NYCRR § 142-2.2. Plaintiff seeks unpaid overtime pay, wage deductions, statutory damages, interest, reasonable attorneys’ fees and costs, liquidated and other damages, and all other appropriate legal and equitable relief, pursuant to the NYLL §§ 198, 663.

JURISDICTION AND VENUE

3. Jurisdiction of the Court over Plaintiff's FLSA claims is invoked pursuant to 29 U.S.C. § 216(b) and 28 U.S.C. § 1331.

4. Jurisdiction of this Court over Plaintiff's NYLL claims is invoked pursuant to 28 U.S.C. § 1367(a) in that the NYLL claims are so related to Plaintiff's FLSA claims as to form the same case or controversy under Article III of the United States Constitution.

5. Venue is proper within this District pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred within this District. Venue is further proper within this District pursuant to 28 U.S.C. § 1391 because Defendants may be found in this District.

PARTIES

6. Plaintiff IGOR AKHTYRSKIY ("Plaintiff") resides in the County of Kings in the State of New York. At all relevant times, Plaintiff was employed by Defendants as an installer, as described herein, from in or about October 2006 until in or about July 2015.

7. Plaintiff's written consent to sue is attached hereto as Exhibit "A"

8. Defendant JANTON CONTRACTORS LLC ("JANTON") is a New York State domestic corporation licensed to do business in the State of New York, with its principal office and place of business at 13 42nd Street, Brooklyn, New York, 11232.

9. Defendant DESIGNCORE MILLWORK AND FIXTURES LTD. ("DESIGNCORE MILLWORK") is a New York State domestic corporation licensed to do business in the State of New York, with its principal office and place of business at 13 42nd Street, Brooklyn, New York, 11232.

10. Defendant DESIGNCORE LTD. (“DESIGNCORE”) is a New York State domestic corporation licensed to do business in the State of New York, with its principal office and place of business at 267 41st Street, Brooklyn, New York, 11232.

11. Defendant JANTON INDUSTRIES INC. (“JANTON INDUSTRIES”) is a New York State domestic corporation licensed to do business in the State of New York, with its principal office and place of business at 13 42nd Street, Brooklyn, New York, 11232.

12. Defendant FRANK IANNO (“Defendant Ianno”) is the owner, chairman/chief executive officer, manager and/or operator of Defendant JANTON. Defendant Ianno has, and at all relevant times had, and exercised, the power to hire, fire, and control the wages and working conditions of the Plaintiff.

13. Defendant Ianno is the owner, chairman/chief executive officer, manager and/or operator of Defendant DESIGNCORE MILLWORK. Defendant Ianno has, and at all relevant times had, and exercised, the power to hire, fire, and control the wages and working conditions of the Plaintiff.

14. Defendant Ianno is the owner, chairman/chief executive officer, manager and/or operator of Defendant DESIGNCORE. Defendant Ianno has, and at all relevant times had, and exercised, the power to hire, fire, and control the wages and working conditions of the Plaintiff.

15. Defendant Ianno is the owner, chairman/chief executive officer, manager and/or operator of Defendant JANTON INDUSTRIES. Defendant Ianno has, and at all

relevant times had, and exercised, the power to hire, fire, and control the wages and working conditions of the Plaintiff.

16. Defendants JANTON, DESIGNCORE MILLWORK, DESIGNCORE, JANTON INDUSTRIES, and Ianno are herein collectively referred to as “Defendants”.

17. Defendants grossed more than \$500,000.00 in each of the last six calendar years.

18. At all relevant times, Defendants has been, and continues to be an “employer” engaged in interstate “commerce” and/or in the “production of goods” for “commerce”, within the meaning of 29 U.S.C. § 203 and the NYLL. At all relevant times, Defendants has employed “employee[s]”, including Plaintiff, each of the FLSA Collective Plaintiffs and the Class Members.

FACTUAL ALLEGATIONS

19. Defendants operate, *inter alia*, a custom furniture manufacturing company.

20. At all times relevant hereto, Defendants employed Plaintiff, as a non-exempt employee.

21. Defendants generally scheduled Plaintiff to work – and he did work – between 50 and 60 hours per week.

22. Plaintiff regularly worked in excess of a 40 hour work week.

23. Defendants agreed to pay Plaintiff \$25 per work hour up to 40 hours a work week.

24. Defendants paid Plaintiff \$25 per hour for most but not all hours worked up to 40 hours a work week.

25. Defendants paid Plaintiff \$37.50 for some but not all overtime hours worked.

26. On some weeks, including but not limited to weeks ending 3/11/14, 4/15/14, and 7/1/14, Defendants paid Plaintiff a straight time rate of pay for some overtime hours worked on a separate paycheck via a separate corporate entity. See Exhibit "B".

27. Defendants would not pay Plaintiff anything \$0.00 for some weeks worked including but not limited to weeks ending 3/17/15, 3/24/15, 5/19/15, 6/2/15, 6/23/15, 6/30/15, 7/7/15, 7/14/15, 7/21/15, 7/28/15, and 8/4/15.

28. Defendants did not pay Plaintiff overtime premium for all hours worked in excess of 40.

29. Upon information and belief, Defendants violated NYLL § 195(3) by failing to furnish Plaintiff with a statement with every payment of wages, listing, among other things, hours worked, rates paid, gross wages, deductions and net wages, and an explanation of how such wages were computed.

30. Defendants failed to provide Plaintiff with the notices required by NYLL §195(1).

31. Defendants knew of, and/or showed reckless disregard for, the practices by which Plaintiff was not paid overtime premiums for all hours worked in excess of 40 hours in a week. Defendants knew that the nonpayment of overtime premiums would economically injure Plaintiff and that they violated the FLSA and the NYLL.

32. Defendants enacted a plan and policy whereby the Plaintiff would pay for gas for the company car, meter charges, tolls, and home depot charges for the Defendant's

purposes/business then Defendants would reimburse Plaintiff for such expenses. However, Defendants failed to reimburse Plaintiff for \$1,100 worth of expenses expended.

33. Defendants committed the foregoing acts knowingly, intentionally and willfully against the Plaintiff.

FIRST CLAIM FOR RELIEF
(Failure to Pay Overtime Wages – FLSA,)

34. Plaintiff realleges and incorporates by reference all previous paragraphs as if they were set forth again herein.

35. Throughout the statute of limitations period covered by these claims, Plaintiff regularly worked in excess of forty (40) hours per workweek.

36. At all relevant times, Defendants willfully, regularly, repeatedly and knowingly failed to pay Plaintiff required overtime rates for hours worked in excess of forty (40) hours per workweek.

37. Plaintiff seeks damages in the amount of their respective unpaid overtime compensation, liquidated (double) damages as provided by the FLSA for overtime violations, attorneys' fees and costs, and such other legal and equitable relief as this Court deems just and proper.

38. Because Defendants' violations of the FLSA have been willful, the three-year statute of limitations pursuant to 29 U.S.C. § 255 should be equitably tolled for, at the very least, the six-year NYLL statute of limitations period.

SECOND CLAIM FOR RELIEF
(Failure to Pay Overtime Wages – NYLL)

39. Plaintiff realleges and incorporates by reference all previous paragraphs as if they were set forth again herein.

40. It is unlawful under New York law for an employer to suffer or permit a non-exempt employee to work without paying overtime premiums for all hours worked in excess of forty (40) hours in any workweek.

41. Defendants willfully, regularly, repeatedly and knowingly failed to pay Plaintiff the required overtime rates for hours worked in excess of forty (40) hours per workweek.

42. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff has sustained damages, including loss of earnings, in an amount to be established at trial.

43. Plaintiff seeks damages in the amount of his respective unpaid overtime compensation, liquidated damages, prejudgment interest, attorneys' fees and costs, pursuant to NYLL, and such other legal and equitable relief as this Court deems just and proper.

THIRD CLAIM FOR RELIEF
(Failure to Pay Gap Time/Straight Time wages- NYLL §191)

44. Plaintiff, on behalf of himself and the Class Members, realleges and incorporates by reference all previous paragraphs.

45. Defendants failed to pay Plaintiff for all hours worked.

46. Defendants failed to pay Plaintiff \$25 for every hour worked up to 40 hours a work week.

47. Defendants willfully, regularly, repeatedly and knowingly failed to pay Plaintiff the agreed terms of employment for all hours worked.

48. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein, Plaintiff has sustained damages, including loss of earnings, in an amount to be established at trial.

49. Plaintiff seeks damages in the amount of his respective unpaid compensation, liquidated damages, prejudgment interest, attorneys' fees and costs, pursuant to NYLL, and such other legal and equitable relief as this Court deems just and proper.

FOURTH CAUSE OF ACTION
(Violation of the Unauthorized Deduction Provisions of the NYLL)

50. Plaintiff, on behalf of himself and the Class Members, realleges and incorporates by reference all previous paragraphs.

51. Defendants made unauthorized deductions from Plaintiffs' wages in violation of NYLL § 193.

52. Plaintiffs were damaged in an amount to be determined at trial.

FIFTH CLAIM FOR RELIEF
(Notice Violations & Wage Statement Violations – NYLL §195)

53. Plaintiff realleges and incorporates by reference all allegations in all preceding paragraphs as if they were set forth again herein.

54. Defendants failed to supply Plaintiff with notice as required by NYLL § 195, in English or in the languages identified by Plaintiff as his/her primary language, containing Plaintiff's rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; hourly rate or rates of pay and overtime rate or rates of pay if applicable; allowances, if any, claimed as part of the minimum wage,

including tip, meal, or lodging allowances; the regular pay day designated by the employer in accordance with NYLL § 191; the name of the employer; any “doing business as” names used by the employer; the physical address of the employer’s main office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

55. Defendants willfully failed to supply Plaintiff with an accurate statement of wages as required by NYLL § 195, containing the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; hourly rate or rates of pay and overtime rate or rates of pay if applicable; the number of hours worked, including overtime hours worked if applicable; deductions; allowances, if any, claimed as part of the minimum wage; and net wages.

56. Due to Defendants’ violations of the NYLL, Plaintiff is entitled to recover from Defendants \$100 for each workweek that the violations occurred or continue to occur, or a total of \$2,500, as provided for by NYLL § 198(1)-d, and \$50 dollars for each workweek that the violations occurred or continue to occur, or a total of \$2,500, as provided for by NYLL § 198(1)-b, as well as reasonable attorneys’ fees, costs, injunctive and declaratory relief.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

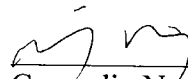
- (a) An award of damages, according to proof, including FLSA and NYLL liquidated damages, and interest, to be paid by Defendants;

- (b) Costs of action incurred herein, including expert fees;
- (c) Attorneys' fees, including fees pursuant to 29 U.S.C. § 216, N.Y. Lab. L. §§ 663, 198 and other applicable statutes;
- (d) Pre-Judgment and post-judgment interest, as provided by law; and
- (e) Such other and further legal and equitable relief as this Court deems necessary, just and proper.

Dated: January 14, 2016

Respectfully submitted,

NAYDENSKIY LAW GROUP, P.C.



Gennadiy Naydenskiy (GN5601)

2747 Coney Island Ave

Brooklyn, NY 11235

(718) 808-2224

naydenskiylaw@gmail.com

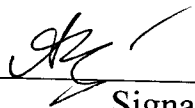
*Attorney for Plaintiff, Proposed Collective
Action Plaintiffs and Proposed Class
Members.*

EXHIBIT A

I am a current or former employee of JANTON CONTRACTORS LLC, DESIGNCORE MILLWORK AND FIXTURES LTD., DESIGNCORE LTD., JANTON INDUSTRIES INC., FRANK IANNO, and/or related entities/individuals. I hereby consent and agree to be a party Plaintiff in this Action to seek redress for violations of the Fair Labor Standards Act, pursuant to 29 U.S.C. 216(b).

I hereby designate Naydenskiy Law Group, P.C. to represent me in this Action and I also consent and agree, if such is necessary, to file this claim on behalf of all others similarly situated.

Signed this 4 day of January, 2016.



Signature

Igor Akhtyrskiy
Full Legal Name (print)

EXHIBIT B

1705

| | | | | | | | | |
|---|--------------|---------------|-------------------|------------------------|--------------------|-------------------------------------|--|----------------------|
| Employee IGOR AKHTYRSKIY, 2000 84TH STREET, BROOKLYN, NY 11214 | | | | | SSN ***-**-9961 | Pay Period: 03/05/2014 - 03/11/2014 | | Pay Date: 07/28/2014 |
| Earnings and Hours | | | | | | | | |
| Hourly | Qty 24:00 | Rate 25.00 | Current 600.00 | YTD Amount 1,800.00 | | | | |
| Taxes | | | | | Current | YTD Amount | | |
| NY - City Resident | | | -7.54 | -14.18 | | | | |
| Federal Withholding | | | 0.00 | | | | | |
| Social Security Employee | | | -37.20 | -111.60 | | | | |
| Medicare Employee | | | -8.70 | -26.10 | | | | |
| NY - Withholding | | | -11.13 | -18.95 | | | | |
| NY - Disability Employee | | | -0.60 | -2.40 | | | | |
| | | | -65.17 | -173.23 | | | | |
| Net Pay | | | 534.83 | 1,626.77 | | | | |
| Paid Time Off | | | | | YTD Used | Available | | |
| Sick | | | | | | 0:00 | | |
| Vacation | | | | | | 0:00 | | |

Janton Contractors LLC 2013, 13 42nd Street, NY 11232, Janton Contractors LLC

Powered by Intuit Payroll

DESIGNCORE LTD

9027

902

| | | | | | | | |
|---|--------------|---------------|-------------------|------------------------|-------------------------------------|---------------------------------------|--|
| Employee IGOR AKHTYRSKIY, 2000 84TH STREET, BROOKLYN, NY 11214 | | | | | SSN ***-**-9961 | Status (Fed/State) Married/Married | Allowances/Extra Fed-1/0/NY-1/0 Pay Date: 03/14/2014 |
| | | | | | Pay Period: 03/05/2014 - 03/11/2014 | | |
| Earnings and Hours | | | | | | | |
| Overtime Hourly Rate | Qty 12:00 | Rate 37.50 | Current 450.00 | YTD Amount 3,768.75 | | | |
| Hourly Rate | 40:00 | 25.00 | 1,000.00 | 9,850.00 | | | |
| | | | 1,450.00 | 13,618.75 | | | |
| Taxes | | | | | | | |
| NYC | | | Current | YTD Amount | | | |
| Medicare Employee Addl Tax | | | -47.25 | -381.16 | | | |
| Federal Withholding | | | 0.00 | | | | |
| Social Security Employee | | | -164.00 | -833.00 | | | |
| Medicare Employee | | | -89.90 | -844.36 | | | |
| NY - State Withholding | | | -21.02 | -197.47 | | | |
| NY - Disability Employee | | | -76.32 | -611.37 | | | |
| | | | -0.60 | -6.60 | | | |
| | | | -399.09 | -2,873.96 | | | |
| Adjustments to Net Pay | | | | | | | |
| Employee Loan Repayment | | | Current | YTD Amount | | | |
| | | | 0.00 | -200.00 | | | |
| Net Pay | | | 1,050.91 | 10,544.79 | | | |

DesignCore, LTD, 13 42 Street, Brooklyn, NY 11232, Tel 1-718-499-9090, Fax 1-718-499-9326, DESIGNCORE LTD

Powered by Intuit Payroll

1706

Employee
IGOR AKHTYRSKIY, 2000 84TH STREET, BROOKLYN, NY 11214

SSN

***-**-9961

Pay Period: 04/09/2014 - 04/15/2014

Pay Date: 07/29/2014

| Earnings and Hours | Qty | Rate | Current | YTD Amount |
|--------------------|-------|-------|---------|------------|
| Hourly | 29:00 | 25.00 | 725.00 | 2,525.00 |

| Taxes | Current | YTD Amount |
|--------------------------|---------|------------|
| NY - City Resident | -12.16 | -26.34 |
| Federal Withholding | 0.00 | |
| Social Security Employee | -44.95 | -156.55 |
| Medicare Employee | -10.51 | -36.61 |
| NY - Withholding | -18.49 | -37.44 |
| NY - Disability Employee | -0.60 | -3.00 |
| | -86.71 | -259.94 |

| | | |
|---------|--------|----------|
| Net Pay | 638.29 | 2,265.06 |
|---------|--------|----------|

| Paid Time Off | YTD Used | Available |
|---------------|----------|-----------|
| Sick | | 0:00 |
| Vacation | | 0:00 |

Janton Contractors LLC 2013, 13 42nd Street, NY 11232, Janton Contractors LLC

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DESIGNCORE LTD

9278

Employee
IGOR AKHTYRSKIY, 2000 84TH STREET, BROOKLYN, NY 11214

SSN

***-**-9961

Status (Fed/State)

Married/Married

Allowances/Extra

Fed-1/0/NY-1/0

Pay Period: 04/09/2014 - 04/15/2014

Pay Date: 04/18/2014

| Earnings and Hours | Qty | Rate | Current | YTD Amount |
|----------------------|-------|-------|----------|------------|
| Overtime Hourly Rate | 10:00 | 37.50 | 375.00 | 6,000.00 |
| Hourly Rate | 40:00 | 25.00 | 1,000.00 | 14,775.00 |
| | | | 1,375.00 | 20,775.00 |

| Taxes | Current | YTD Amount |
|----------------------------|---------|------------|
| NYC | -44.25 | -614.01 |
| Medicare Employee Addl Tax | 0.00 | |
| Federal Withholding | -153.00 | -1,667.00 |
| Social Security Employee | -85.25 | -1,288.05 |
| Medicare Employee | -19.94 | -301.24 |
| NY - State Withholding | -71.49 | -987.43 |
| NY - Disability Employee | -0.60 | -9.60 |
| | -374.53 | -4,867.33 |

| Adjustments to Net Pay | Current | YTD Amount |
|-------------------------|----------|------------|
| Employee Loan Repayment | 0.00 | -200.00 |
| Net Pay | 1,000.47 | 15,707.67 |

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DESIGNCORE LTD

9678

| | | | | | | |
|---|-------|-------|----------|-------------------------------------|----------------------|------|
| Employee | | | | SSN | | |
| IGOR AKHTYRSKIY, 2000 84TH STREET, BROOKLYN, NY 11214 | | | | ***-**-9961 | | |
| Earnings and Hours | | | | Pay Period: 06/25/2014 - 07/01/2014 | Pay Date: 07/04/2014 | |
| Hourly Rate | Qty | Rate | Current | YTD Amount | Vacation | 0.00 |
| | 40.00 | 25.00 | 1,000.00 | 25,287.50 | | |
| Overtime Hourly Rate | 9.00 | 37.50 | 337.50 | 8,718.75 | | |
| | | | 1,337.50 | 34,006.25 | | |
| Taxes | | | | Current | YTD Amount | |
| NYC | | | | -42.75 | -1,026.69 | |
| Medicare Employee Addl Tax | | | | 0.00 | | |
| Federal Withholding | | | | -147.00 | -3,066.00 | |
| Social Security Employee | | | | -82.93 | -2,108.39 | |
| Medicare Employee | | | | -19.39 | -493.09 | |
| NY - State Withholding | | | | -69.07 | -1,651.63 | |
| NY - Disability Employee | | | | -0.60 | -16.20 | |
| | | | -361.74 | -8,362.00 | | |
| Adjustments to Net Pay | | | | Current | YTD Amount | |
| Employee Loan Repayment | | | | 0.00 | -200.00 | |
| Net Pay | | | | 975.76 | 25,444.25 | |
| Paid Time Off | | | | YTD Used | Available | |
| Sick | | | | | 0.00 | |

DesignCore. LTD. 13 42 Street, Brooklyn, NY 11232. Tel 1-718-499-9090, Fax 1-718-499-9326, DESIGNCORE LTD

Powered by Intuit Payroll

1707

| | | | | | | |
|---|-------|-------|---------|-------------------------------------|----------------------|------------------|
| Employee | | | | SSN | Status (Fed/State) | Allowances/Extra |
| IGOR AKHTYRSKIY, 2000 84TH STREET, BROOKLYN, NY 11214 | | | | ***-**-9961 | Married/Married | Fed-10/0/NY-10/0 |
| Earnings and Hours | | | | Pay Period: 06/25/2014 - 07/01/2014 | Pay Date: 07/30/2014 | |
| Hourly | Qty | Rate | Current | YTD Amount | | |
| | 30.30 | 25.00 | 762.50 | 3,287.50 | | |
| Taxes | | | | Current | YTD Amount | |
| NY - City Resident | | | | -13.55 | -39.89 | |
| Federal Withholding | | | | 0.00 | | |
| Social Security Employee | | | | -47.28 | -203.83 | |
| Medicare Employee | | | | -11.06 | -47.67 | |
| NY - Withholding | | | | -20.82 | -58.26 | |
| NY - Disability Employee | | | | -0.60 | -3.60 | |
| | | | -93.31 | -353.25 | | |
| Net Pay | | | | 669.19 | 2,934.25 | |

Janton Contractors LLC 2013, 13 42nd Street, NY 11232, Janton Contractors LLC

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